

5-1-1995

## Forming a More Secure Union: The Growing Problem of Organized Crime in Europe as a Challenge to National Sovereignty

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### Recommended Citation

Solomon, Joel S. (1995) "Forming a More Secure Union: The Growing Problem of Organized Crime in Europe as a Challenge to National Sovereignty," *Penn State International Law Review*: Vol. 13: No. 3, Article 11.

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# Forming a More Secure Union: The Growing Problem of Organized Crime in Europe as a Challenge to National Sovereignty

## I. Introduction

Organized crime is growing at an exponential rate throughout the European Union.<sup>1</sup> The fall of the Iron Curtain and the loosening of internal borders within the Union has resulted in a freer and more deregulated environment, which has created the perfect breeding ground for organized crime syndicates and their illicit activities. Crimes that were once limited to drug trafficking and money laundering have expanded to include the smuggling of cars and even human beings, as well as radioactive and nuclear materials trafficking.<sup>2</sup> The only way for the European Union to effectively stop the spread of the organized crime problem is to suppress the urge for national sovereignty and to organize itself into a unified front. Absent this unified force, the activities of organized crime groups in Europe will ultimately lead to the demise of the Union in economic and global markets.<sup>3</sup>

Criminal organizations are now able to exploit the open movement of people, products, and money<sup>4</sup> through the use of advanced

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1. The European Union currently includes Austria, Belgium, Britain, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden. Switzerland and Turkey are seeking admission.

2. See generally Berlin Declaration on Increased Cooperation in Combatting Drug Crime and Organized Crime in Europe, Council of Ministers, Pres. 94-182, Sept. 8, 1994, reprinted in RAPID, Sept. 14, 1994, available in LEXIS, News Library, CURNWS file [hereinafter Berlin Declaration]; Review of Priority Themes — *The Impact of Organized Criminal Activities Upon Societies at Large: Report of the Secretary-General*, U.N. ESCOR, 2d Sess., Agenda Item 3, U.N. Doc. E/CN.15/1993/3 (1993) [hereinafter *The Impact of Organized Criminal Activities Upon Society at Large*]; *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, U.N. ESCOR, U.N. Doc. E/Conf. 82/15 (1988), reprinted in 28 I.L.M. 493 (1989) [hereinafter 1988 Vienna Convention].

3. While this Comment focuses specifically on organized criminal activities, it should be noted that international terrorism is also of great concern and that many of the steps being taken to combat organized crime can be applied to the problem of terrorism. See generally M. Cherif Bassiouni, *Effective National and International Action Against Organized Crime and Terrorist Criminal Activities*, 4 EMORY INT'L L. REV. 9 (1990).

4. See Tom Sherman, *The Internationalisation of Crime and the World Community's Response*, 19 COMMW. L. BULL. 1814, 1817 (1993): Article 13 of the Single European Act and the Political Declaration by the Governments of the Member States on the Free Movement of Persons [hereinafter *Single European Act*] states, "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty." *Single European Act*, Feb. 28, 1986,

telecommunication systems and computer technology.<sup>5</sup> Recent evidence indicates that many international crime groups are collaborating with each other, making their networks diverse and crimes more difficult to detect.<sup>6</sup> The transnational ramifications of high-profit crimes such as drug trafficking and money laundering have placed organized crime at the forefront of the world's attention.<sup>7</sup> Recently, the Ministers for Justice and Home Affairs of the European Union met in Berlin to discuss the implementation of cooperative steps to establish a more unified and powerful force against organized crime.<sup>8</sup>

Unity, cooperation, and diversification in fighting these crimes are essential to the survival of the Union. Like the criminals themselves, the members of the Union must utilize the most advanced forms of technology and pool resources to overcome national boundaries. The vast region that comprises the Union makes border monitoring of criminal organizations significantly more difficult. The original monitoring systems that acted as obstacles and deterrents to drug trafficking and money laundering will no longer be effective.<sup>9</sup> In addition, the focus of the Union member states must include both traditional and new forms of organized criminal activity.<sup>10</sup>

This Comment will analyze the past, present, and future existence of organized crime in Europe. Part II traces the history of organized criminal activity in Europe throughout the last thirty years and examines Europe's previous attempts to combat organized crime. Part III assesses the new threat of organized crime and the recent Union attempts at fighting the more pervasive crimes. Part IV analyzes the impact of the Berlin Declaration on Increased Cooperation in Combatting Drug Crime and Organized Crime in Europe. Finally, Part V previews the future of organized crime in Europe by looking at upcoming conferences and future plans to fight crime through agencies such as the European Police

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1987, O.J. Eur. Comm. (L 169/1), *reprinted in* 25 I.L.M. 503 (1987). See Julian J.E. Schutte, *The European Market of 1993: Test for a Regional Model of Supranational Criminal Justice or of Interregional Cooperation in Criminal Law*, 3 CRIM. L.F. 55 (1991) (discussing the Single European Act and subsequent agreements relating to international cooperation in the field of criminal justice.)

5. See *infra* notes 40-44, 86-88 and accompanying text (discussing the new threat of organized crime).

6. Sherman, *supra* note 4, at 1817.

7. Bassiouni, *supra* note 3, at 19.

8. See *infra* part IV (discussing the Berlin Declaration).

9. William C. Gilmore, *Police Co-operation and the European Communities: Current Trends and Recent Developments*, 19 COMMW. L. BULL. 1960 (1993).

10. See generally *Review of Priority Themes - Control of Proceeds of Crime: Report of the Secretary-General*, U.N. ESCOR, 2d Sess., Agenda Item 3, U.N. Doc. E/CN.15/1993/4 (1993) [hereinafter *Control of Proceeds of Crime*].

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Office (Europol).<sup>11</sup> It will be evident at the conclusion of this Comment that unless the Member States unify to fight the growing problem of organized crime, the Union will ultimately dissolve in the economic and global markets.

### II. Thirty Years of Organized Crime in Europe

Organized crimes, such as drug trafficking, money laundering, and arms smuggling, have been pervasive in Europe for centuries.<sup>12</sup> The most effective method of combatting organized crime has been through cooperation between neighboring countries.<sup>13</sup> However, bilateral cooperation was not enough to end organized crime. Because previous attempts failed, the crimes that existed regionally in the past have now expanded internationally with an infusion from modern technology and newly-opened global markets.

#### A. Organized Crime in the Past

During the 1970s, the demand for narcotics boomed in Western countries, spurring international drug trafficking.<sup>14</sup> As a result, an incipient demand for well-connected and financially secure organized crime families developed.<sup>15</sup> Organized crime syndicates expanded their network operations in response to the growing demand.<sup>16</sup> However, the demand was not limited to drug trafficking. While organized crime families continued their involvement in the money laundering and drug trafficking businesses,<sup>17</sup> they expanded their markets to include trading in stolen artworks,<sup>18</sup> cultural objects<sup>19</sup> and weapons.<sup>20</sup>

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11. Europol was established in the Treaty on European Union, tit. VI, art. K.1 (9), *reprinted in* EUROPEAN UNION: SELECTED INSTRUMENTS TAKEN FROM THE TREATIES, bk. 1, vol. 1, at 48 (1993) [hereinafter Maastricht Treaty].

12. Sherman, *supra* note 4, at 1815.

13. *See infra* notes 135-36 and accompanying text (illustrating an agreement between Germany and the former Soviet Union).

14. Sherman, *supra* note 4, at 1815.

15. *See id.*

16. *Id.*

17. *See generally* Scott E. Mortman, *Putting Starch in European Efforts to Combat Money Laundering*, 60 FORDHAM L. REV. 429 (1992); *see also infra* part III.C.

18. *See generally* Stephen Rae, *Art Theft - The Second Greatest Crime*: GARDA REVIEW, *reprinted in* CONSTABULARY GAZETTE, Apr. 1991; Robin Morris Collin, *The Law and Stolen Art, Artifacts, and Antiquities*, 36 HOW. L.J. 17 (1993).

19. *See generally* Claudia Fox, Comment, *The Unidroit Convention on Stolen or Illegally Exported Cultural Objects: An Answer to the World Problem of Illicit Trade in Cultural Property*, 9 AM. U. J. INT'L L. & POL'Y 225 (1993).

20. The market for smuggled arms dates back for centuries. Since the breakup of the Soviet Union, the market has expanded to include nuclear arms smuggling. *See infra* part III.B (discussing

### *B. Early Attempts at Combating Organized Crime in the European Union*

Traditionally, neighboring countries collaborated in attempts to create a unified force to combat organized crime in Europe. Since World War II, the Council of Europe<sup>21</sup> has attempted to strengthen the front by coordinating formal conventions. The resulting treaties often prescribed the provisions for mutual assistance in the administration of justice and cooperation in fighting crime within the Union. Two examples of Council Conventions include the 1957 European Convention on Extradition<sup>22</sup> and the 1959 European Convention on Mutual Assistance in Criminal Matters.<sup>23</sup> These conventions helped create cohesiveness among the Union by bringing together the governments of member states to establish intergovernmental agreements.<sup>24</sup> Nevertheless, the complexity of these conventions and treaties prompted some Union members to create their own intergovernmental agreements to cooperate in fighting organized crime.<sup>25</sup>

In 1960, the Benelux countries, which include Belgium, the Netherlands, and Luxembourg, formed the first effective unified front against organized crime in the Benelux region. This cohesive community, called the Benelux Economic Union,<sup>26</sup> abolished its internal borders and transferred the responsibility of facilitating border control to the external frontiers<sup>27</sup> of the region.<sup>28</sup> By opening their internal borders, the Benelux countries became more susceptible to criminal

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nuclear materials smuggling).

21. The Council of Europe is the chief legislating body for the European Union that helps create interstate cooperation in criminal matters between judicial authorities. Schutte, *supra* note 4, at 70-71. The Council works to achieve this cooperation through a network of treaties. *Id.* All Member States of the Union have representatives on the Council. *Id.*

22. Convention on Extradition, *opened for signature* Dec. 13, 1957, Europ. T.S. No. 24.

23. Convention on Mutual Assistance in Criminal Matters, *opened for signature* April 20, 1959, Europ. T.S. No. 30. For further examples of Council of Europe treaties to develop mutual assistance in administration of justice, see Convention on the Transfer of Sentenced Persons, *opened for signature* Mar. 21, 1983, Europ. T.S. No. 112; see also E. Muller-Rappard, *The European System*, in 2 INTERNATIONAL CRIMINAL LAW 95-119 (M.C. Bassiouni ed., 1989); Schutte, *supra* note 4, at 69-72.

24. Schutte, *supra* note 4, at 71-72.

25. *Id.* at 71. Many of the complexities arose as a result of the difficulty involved in drafting provisions that would please all convention participants. *Id.*

26. Treaty Instituting the Benelux Economic Union, Feb. 3, 1958, 381 U.N.T.S. 165.

27. "Internal borders" refers to the individual borders between each of the Benelux countries. The "external frontier" is the border that surrounds the Benelux region, separating it from the rest of the neighboring countries. See Convention on the Transfer of Control of Persons to the External Frontiers of Benelux Territory, April 11, 1960, 374 U.N.T.S. 3.

28. *Id.*

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movement of persons and products. However, despite the open borders, organized criminal activity did not significantly increase. It was the success of the small Benelux Economic Union<sup>29</sup> that sparked later agreements and treaties to help fight organized crime throughout the entire European Union.<sup>30</sup>

Other early efforts to combat organized crime in Europe include the formation of Interpol<sup>31</sup> and the TREVI<sup>32</sup> Group. Interpol was created in 1956 to coordinate law enforcement agencies around the world to facilitate the arrest of fugitives.<sup>33</sup> In recent years, Interpol has created a computer networking system to ensure that member countries can exchange information reliably, rapidly, and securely.<sup>34</sup>

The TREVI Group functions much like the U.S. Department of Justice.<sup>35</sup> Formed in 1975 at the Trevi fountain in Rome, the TREVI Group consists of Justice and Interior Ministers from all fifteen European Union member countries.<sup>36</sup> This group examines the policing problems that arise due to the opening of the Union's borders. Particular attention is paid to the areas of drug trafficking, organized crime, money laundering, and terrorism.<sup>37</sup> Based on its own experience, the TREVI Group advised the European Council in Maastricht on how to set up the European Police Office, Europol.<sup>38</sup>

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29. The 1962 Treaty Concerning Extradition and Mutual Assistance in Criminal Matters, June 27, 1962, 616 U.N.T.S. 79, as amended by the 1969 Convention Concerning Administrative and Judicial Cooperation in Respect of Laws and Regulations Pertaining to the Realization of the Aims of the Benelux Economic Union, April 29, 1969, 779 U.N.T.S. 111, were largely responsible for the success of the Benelux Union. Schutte, *supra* note 4, at 78-79.

30. See *infra* notes 92-168 and accompanying text (discussing recent agreements aimed at combatting organized crime).

31. Interpol was created in 1956 after a series of meetings dating from 1914. Sherman, *supra* note 4, at 1819. It is the central technology center for Union cooperation and mutual assistance. *Id.* at 1820.

32. TREVI is an acronym for Terrorisme, Radicalisme et Violence Internationale. Schutte, *supra* note 4, at 76 n.83.

33. Sherman, *supra* note 4, at 1819-20.

34. *Id.* Lately, Interpol has modernized its telecommunications through the use of advanced technology that allows faster and more secure transfers of information to Interpol member nations. *Id.*

35. Richard A. Martin, Address, *Problems in International Law Enforcement*, 14 FORDHAM INT'L L.J. 519, 523 n.6 (1990-91).

36. See *id.*; Schutte, *supra* note 4, at 76 n.83.

37. See *Social Affairs*, E.C. COMMENTARIES, Sept. 15, 1994, § 6.5, available in LEXIS, News Library, CURNWS file.

38. Gilmore, *supra* note 9, at 1965; see also *infra* part V.B. (discussing Europol).

III. The New Threat of Organized Crime in Europe<sup>39</sup>

At the 1988 U.N. conference in Vienna,<sup>40</sup> crime experts concluded that "organized crime could be viewed as a noxious side-effect of technological advances . . . . [N]ew groups [are] emerging to take their place beside the older, historically better-known criminal associations."<sup>41</sup> Organized crime is characterized by the ability to expand into new activities or geographical areas as soon as the opportunity arises or necessity demands.<sup>42</sup> Furthermore, the use of computers, advanced telecommunication systems, and more efficient transportation all add to the growing complexity of organized crime.<sup>43</sup> Essentially, advanced technology is obliterating the significance of national boundaries within the Union.<sup>44</sup>

The fall of the Berlin Wall in 1989 and the opening of Eastern Europe brought an infusion of organized criminal activity. Today, organized crime syndicates are joining as partners to invest in each other's operations.<sup>45</sup> Because of the sharp increase in organized crime activities in the former Soviet bloc and other Eastern European countries,<sup>46</sup> the rate of crime in Europe has intensified and expanded in

39. For a complete listing of some recent organized crime activities that have been identified by the United Nations, see *The Impact of Organized Criminal Activities Upon Society at Large*, *supra* note 2; see also *Social Development: Crime Prevention and Criminal Justice - The Strengthening of International Cooperation in Combatting Organized Crime: Report of the Secretary General*, U.N. GAOR, 47th Sess., Agenda Item 93(b), at 9, U.N. Doc. A/47/381 (1992) [hereinafter *Social Development: Crime Prevention and Criminal Justice*].

40. *Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic III: "Effective National and International Action Against (a) Organized Crime; (b) Terrorist Criminal Activities"*, U.N. ESCOR, 8th U.N. Congress, U.N. Doc. A/Conf.144/IPM.2 (1988) [hereinafter *Report*].

41. *Report*, *supra* note 40, at 7.

42. See *Control of Proceeds of Crime*, *supra* note 10, at 5.

43. See *The Impact of Organized Criminal Activities Upon Society at Large*, *supra* note 2, at 4.

44. *Id.*; see also Sherman, *supra* note 4, at 1816. A British police briefing paper noted last year that no country has yet neutralized the international organized crime families that remain "an ingredient of global ungovernability." Stewart Tendler, *East-West Crime Syndicates Exploit Open Frontiers*, THE TIMES (London), Dec. 3, 1994.

45. *Russian and Italian Mafias Work as Partners in Crime*, AGENCE FRANCE PRESSE, Mar. 12, 1995, available in LEXIS, News Library, CURNWS File; see also *Russian Crime Tentacles Stretch Through East Europe*, AGENCE FRANCE PRESSE, Mar. 17, 1995, available in LEXIS, News Library, CURNWS File.

46. According to a 123-page international consulting group report titled "Business Security Outlook — The World in 1995," the Russian mafia is believed to control over 40,000 businesses in Russia. Stacy Shapiro, *Crime and Fraud In a New League, Terrorism No Longer Biggest Concern From Multinationals*, CRAIN COMMUNICATIONS BUS. INS., Dec. 26, 1994, at 39, available in LEXIS, News Library, CURNWS File. The study cites that organized crime is the most pervasive threat to business in 1995, not only in Russia but also throughout the entire European Union. *Id.*

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scope, thereby creating a more serious hurdle in the battle against organized crime.<sup>47</sup> Organized crimes have become intricately linked, making it nearly impossible, for example, to fight drug trafficking without fighting money laundering and arms smuggling at the same time. Furthermore, drug trafficking has exploded internationally,<sup>48</sup> arms smuggling has branched out into the more dangerous arena of nuclear materials smuggling,<sup>49</sup> and money laundering<sup>50</sup> has taken off with the development of sophisticated computer technology. In addition, automobile smuggling and people trafficking<sup>51</sup> have increased.<sup>52</sup> Criminal groups that once functioned primarily in European regions have expanded their networks internationally because of access to new organized crime cooperatives.<sup>53</sup>

A recent CNN report indicated that residents of the former Soviet republics believe their countries are being run and controlled by organized crime groups.<sup>54</sup> This belief is not unfounded in light of the 5000 active criminal organizations in the former Soviet region.<sup>55</sup> Although these groups are based in the former Soviet republics, their activities have international ramifications.<sup>56</sup> To make matters worse, recent news reports show that organized crime is growing stronger and richer worldwide, amassing up to one trillion dollars in yearly revenues.<sup>57</sup>

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One of the alarming repercussions of the spread of organized crime in Europe is that it is also reaching the streets of the United States. See also *FBI Expanding Influence in Assault on Asian Crime*, THE STATE J.-REG., Mar. 24, 1995, at 10.

47. See generally *Berlin a Focal Point of Trans-European Crime* (CNN television broadcast, Oct. 27, 1994) (transcript #704-4).

48. See *infra* notes 61-72 and accompanying text.

49. See *infra* notes 73-77 and accompanying text.

50. See *infra* notes 78-88 and accompanying text.

51. Recently, organized crime groups have begun to smuggle women from Russia and Africa for the purpose of prostitution. See *Trafficking in Humans: Big Business in Europe; Light Penalties and Huge Profits Spell a Boon for Organized Crime*, INT'L HERALD TRIB., Jan. 3, 1995. These groups have found people smuggling particularly appealing because it is less risky than drug trafficking and the penalty for being caught is minor. *Id.*

52. While this Comment will briefly cover the serious crimes of drug trafficking, nuclear materials smuggling, and money laundering, it should not be assumed that car smuggling and the trafficking of people are any less serious or urgent. Those topics will be covered in the discussion of the Berlin Declaration. See *infra* notes 154-158 and accompanying text.

53. See Shapiro, *supra* note 45, at 39; see also *World News Summary*, AGENCE FRANCE PRESSE, Feb. 20, 1995, available in LEXIS, News Library, CURNWS File.

54. See *Russians See Major Rise in Organized Crime* (CNN television broadcast, Oct. 28, 1994) (transcript #407-1).

55. *Id.*

56. See Shapiro, *supra* note 46, at 39.

57. E.g., *Forum Discusses Crime Growth*, DAYTON DAILY NEWS, June 17, 1994, at 2A. For a general overview of the recent growth and success of organized crime in Europe, see CLAIRE



In Italy, organized crime has, in many ways, taken over the country. In fact, the seriousness of the organized crime problem has led the Italian government to enact anti-organized crime statutes.<sup>58</sup> Due to loosened border control and immigration and customs inspection standards, the European Union has been unable to stop organized crime from crossing European borders. Mob-linked political and business corruption is spreading from Italy to the rest of Europe, making it even more difficult to contain and control their criminal activities.<sup>59</sup> One columnist explains that "while some political movements are growing narrowly ethnic, exclusionary and insular, crime is growing cosmopolitan, sophisticated and flexible."<sup>60</sup> Although every Union member is fighting crime, without cooperation each nation is losing the battle.

#### A. Organized Drug Trafficking

Drug trafficking has become one of the most nefarious criminal activities as well as one of the most profitable.<sup>61</sup> There is evidence of cooperation between organized crime groups in the international sale and distribution of narcotics.<sup>62</sup> An example of this expansion was demonstrated by the famous "Pizza Connection" case.<sup>63</sup> This "connection" revealed links between Italian "mafia" organizations and similar groups in the former Soviet republics and around the world.<sup>64</sup> These links were used to ship narcotics into the United States via a complex network of transactions.<sup>65</sup> The conspiracy's cash proceeds were collected at pizza parlors and then laundered through a maze of

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STERLING, THIEVES' WORLD: THE THREAT OF THE NEW GLOBAL NETWORK OF ORGANIZED CRIME, (Simon & Schuster eds., 1994) (providing a general overview of the recent spread of international organized crime).

58. For a sample of Italy's anti-Mafia and organized crime confiscation laws, see Bassiouni, *supra* note 3, at 24-25 n.24.

59. Daniel Berger, *It's Them vs. Us*, BALTIMORE SUN, July 16, 1994, at 8A.

60. *Id.*

61. See *Control of Proceeds of Crime*, *supra* note 10, at 5.

62. *Russian and Italian Mafias Work as Partners in Crime*, *supra* note 45. It is believed that more than \$500 billion transit through international drug trafficking networks each year. See *U.N. Gears For Landmark Conference on Crime*, AGENCE FRANCE PRESSE, Nov. 10, 1994, available in LEXIS, News Library, CURNWS File.

63. *United States v. Casamento*, 887 F.2d 1141 (2d Cir. 1989), (commonly referred to as the "Pizza Connection" case). See Sherman, *supra* note 4, at 1818.

64. Sherman, *supra* note 4, at 1818.

65. *Casamento*, 887 F.2d at 1148.

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bank accounts.<sup>66</sup> In 1992, Operation Green Ice was commenced as an international initiative to fight these growing links.<sup>67</sup>

Operation Green Ice, coordinated by the U.S. Drug Enforcement Administration, included law enforcement agencies from several countries.<sup>68</sup> This effort revealed a connection between the Colombian cocaine cartels and the organized crime groups in Italy.<sup>69</sup> The intercontinental collaboration between the organized crime groups helped facilitate the importation and distribution of large quantities of cocaine throughout Europe.<sup>70</sup>

The most frightening finding of Operation Green Ice is not solely that organized crime is thriving in today's European Union, but that it is also becoming significantly more complex.<sup>71</sup> Efforts to fight organized crime now must be targeted at a world-wide network of organizations, each assisting the other in perpetuating international crimes. This network makes it difficult to fight the spectrum of organized criminal activity.<sup>72</sup>

### *B. Nuclear Materials Smuggling*

Although contraband smuggling has always been common to the criminal trade, efforts at control by authorities have been futile. Weapons smuggling has expanded from guns and ammunition to include more dangerous and deadly nuclear materials such as recycled highly-enriched plutonium 239 that is usable in manufacturing nuclear weapons.<sup>73</sup> In 1994, German police investigated a record 267 cases of smuggling illicit nuclear materials, an increase from forty-one cases in

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66. *Id.* at 1149.

67. Sherman, *supra* note 4, at 1817-18.

68. *Id.* at 1818.

69. *Id.*

70. *Id.*

71. *Id.*

72. The Deputy Assistant Secretary of State expressed concern for the United States in a recent presentation to the House Subcommittee on crime, where he said, "While the United States is by no means the only - or largest - market for [the increase in heroin trafficking], we remain the most lucrative market and therefore the primary target for both established and new international heroin trafficking organizations." *Prepared Statement of Cresencia S. Arcos, Jr., Deputy Assistant Secretary of State For International Narcotics Matters Before the Subcommittee on Crime House Judiciary Committee*, FED. NEWS SERVICE, Sept. 29, 1994, available in LEXIS, News Library, CURNWS File.

73. See *1994 A Record Year for German Nuclear Smuggling*, XINHUA NEWS AGENCY, Jan. 25, 1995, available in LEXIS, News Library, CURNWS File. See also *Nuclear Materials: Commission Sets Out Ways to Combat Nuclear Smuggling*, EUR. INFO. SERVICE - EUROPE ENERGY, Sept. 16, 1994, Section #430, available in LEXIS, News Library, CURNWS File.

1991.<sup>74</sup> Even worse, once this crime infiltrates the Union, containment is nearly impossible because of the use of middlemen from Central Europe. By using middlemen in Germany, for example, organized crime groups are able to elude police from detecting the users of the materials and the groups responsible for arranging the transaction.<sup>75</sup>

Germany's central location in Europe and close proximity to the former Soviet Union are the primary reasons for the inflow of smuggled plutonium into Germany.<sup>76</sup> However, like other organized criminal activities, it is expected that plutonium smuggling will eventually infiltrate the rest of the Union. Although no criminal organization has taken credit for the recent incidents of radioactive materials smuggling, German police believe that organized crime groups, mostly from the former Soviet republics, will eventually take charge.<sup>77</sup> Soon, the power to create nuclear arsenals could fall into the hands of international criminal organizations.

### C. Money Laundering and New Technology

Money laundering has been utilized by the organized crime trade since banks were first established. "Laundering" involves transferring money via apparently legitimate means so as to hide the illicit criminal activity from which it is derived.<sup>78</sup> Money laundering and narcotics trafficking go hand-in-hand because the money obtained from drug sales requires laundering so that it appears "clean" and not tainted by any criminal act. Organized crime groups control the drug trafficking market.<sup>79</sup> Therefore, it is also important for these groups to dominate the banks and other financial systems. By utilizing the newest forms of technology and telecommunication, such as advanced on-line computer networks, organized crime groups are able to effectively bypass government detection and can control financial transactions around the world.

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74. 1994 A Record Year For German Nuclear Smuggling, *supra* note 73; 90 Radioactive Smugglings Found in Germany in First Half of Year, XINHUA NEWS AGENCY, Sept. 14, 1994, available in LEXIS, News Library, CURNWS File.

75. 90 Radioactive Smugglings Found in Germany in First Half of Year, *supra* note 74. See generally Stephen Nisbet, *EU Wants Action on Drugs and Nuclear Trafficking*, THE REUTER EUR. COMMUNITY REP., Sept. 5, 1994, available in LEXIS, News Library, CURNWS File.

76. Christopher Lockwood, *Europe is Failing to Curb Drug Trade*, THE DAILY TELEGRAPH, Sept. 9, 1994, at 17.

77. 90 Radioactive Smugglings Found in Germany in First Half Year, *supra* note 74.

78. See Council Directive of June 10, 1991 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, Council Directive 91/308, art. 1, 1991 O.J. (L 166) (listing definitions).

79. See *supra* part III.A.

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The international drug trade yields more than \$500 billion in proceeds each year,<sup>80</sup> and drug traffickers use bank systems in as many as fifty countries on every continent to conduct their laundering.<sup>81</sup> Money laundering by these organized crime groups, however, far transcends the European Union.<sup>82</sup> For example, banking systems in the Caribbean and Mexico are also being tapped by launderers.<sup>83</sup> Furthermore, these organizations are making increasing and effective use of non-bank financial systems like the *casas de cambio*<sup>84</sup> along the border of the United States and Mexico.<sup>85</sup>

With the growth of computer and telecommunication technology, organized crime syndicates are learning newer and more complicated ways to launder their money.<sup>86</sup> The use of technology to conduct on-line transfers on personal computers makes it more difficult to track and catch illegal transactions made by these highly sophisticated organized crime groups.<sup>87</sup> To successfully conquer these complex laundering schemes, law enforcement agencies must stay ahead of technology.<sup>88</sup>

### *D. Recent Attempts at Fighting Organized Crime: Failing Endeavors*

Since its formation, the European Union has desperately tried to come together as a powerful unit,<sup>89</sup> yet the issue of national sovereignty continues to prevent unity among its members. While trying to produce a strong union, member nations have stubbornly fought to maintain their national sovereignty. Many Union leaders and international policy experts feel that member nations have already significantly chipped away at their national sovereignty.<sup>90</sup> Countries like Britain, France, and

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80. *Control of Proceeds of Crime*, *supra* note 10, at 4-5. Recent figures by the Financial Action Task Force on Money Laundering suggest that \$500 billion may be a conservative amount. *Id.*

81. *Narcotics-Related Money Laundering and Other Financial Transactions*, INT'L NARCOTICS CONTROL STRATEGY REP., March 1, 1991, available in LEXIS, News Library, CURNWS File.

82. *Id.*

83. *Id.*

84. *Casas de cambio* are shops that exchange U.S. dollars for Mexican pesos and visa versa.

85. *Narcotics-Related Money Laundering and Other Financial Transactions*, *supra* note 81.

86. *Control of Proceeds of Crime*, *supra* note 10, at 5.

87. *See The Impact of Organized Criminal Activities Upon Society at Large*, *supra* note 2, at 4-6.

88. *Id.*

89. *See generally* Bassiouni, *supra* note 3.

90. *See EC: Participants in the "Counter Summit" Confirm Their Attachment to National Sovereignty*, REUTER TEXTLINE AGENCY EUR., Oct. 29, 1993, available in LEXIS, News Library, CURNWS File (discussing the need to preserve national sovereignty to fight any enlargement of European Community actions and suggesting that the Maastricht Treaty that created the European Union is "against history"); *see also* Hurd *Firm on Present UK Policy Towards E. U.*, XINHUA NEWS

Denmark are among the most outspoken guardians of national sovereignty.<sup>91</sup> Member States fear that by relinquishing control of nationally-sensitive information and total self-rule for the good of Union unity, they will also be jeopardizing national safety and security as well as individual identity.<sup>92</sup> However, now more than ever, with the loosening of internal border controls, unity and cooperation among Union members is essential to economic success<sup>93</sup> as well as to the Union's overall security.<sup>94</sup>

Without cooperation by Union member nations, the fight against organized crime in Europe is, unquestionably, a losing battle. Necessary methods of cooperation include: (1) extradition of criminals; (2) mutual legal assistance in securing tangible evidence and witnesses for the prosecution of criminals; (3) recognition and enforcement of penal judgments rendered by a nation's courts; and (4) law enforcement and prosecutorial cooperation.<sup>95</sup> Nearly every agreement created by the Union and the United Nations includes at least one of these cooperative methods.<sup>96</sup> However, because of national sovereignty and complicated historical and political considerations, none of the multinational or regional agreements integrates all of the formal methods into one, comprehensive form of Union cooperation.<sup>97</sup>

AGENCY, March 11, 1995, available in LEXIS, News Library, CURNWS File (discussing the British Foreign Secretary Douglas Hurd's plan to maintain national sovereignty and prevent any further transfer of national powers to E.U. institutions).

91. *Hurd Firm on Present UK Policy Towards E.U.*, *supra* note 90; see also Kenneth Baker, *Fight For Our Frontiers*, MAIL ON SUNDAY, Feb. 19, 1995, available in LEXIS, News Library, CURNWS File (stating that "Britain is a sovereign nation, not a hotel" and criticizing the need to give up border controls).

92. These real concerns about trading national sovereignty for the formation of a more secure Union is best evidenced by the recent discussions surrounding the formation of Europol, the centralized European police force. See *infra* part V.B. In this case, member nations are reluctant to provide Europol with nationally sensitive information that could jeopardize control over national security. See Jeremy Lovell, *E.U. Summit Pledges June Deal on Anti Crime Unit*, THE REUTER EUR. COMMUNITY REPORT, Dec. 10, 1994, available in LEXIS, News Library, CURNWS File.

93. The Maastricht Treaty envisioned the need for a common Union currency to maintain financial strength and stability in global economic markets. See James Hardy, *Major Set to Crack Down on Warring Ministers*, PRESS ASS'N NEWSFILE, Feb. 15, 1995, available in LEXIS, News Library, CURNWS File. Britain is among the countries against such a move. *Id.*

94. See generally Bassiouni, *supra* note 3, at 20. It should be noted that this Comment addresses the ideal situation of complete, uninhibited unionization to overcome the organized crime problem in Europe. It is unlikely that Union member states will ever fully relinquish their national sovereignty. As a result, the European Union will never have unified strength and organized crime will continue to flourish.

95. *Id.* at 33.

96. *Id.* at 34.

97. *Id.* at 34-35.

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Although the need to form a single codified Union agreement on cooperation is essential, multinational integrated proposals for Union cooperation in fighting organized crime have been met with opposition due to this fear of placing limitations on national sovereignty and self-rule.<sup>98</sup> This overemphasis on self-rule, however, is creating opportunities for organized crime groups to strengthen and grow throughout the Union.<sup>99</sup>

1. *The Benelux Economic Union*.<sup>100</sup>—The Benelux Economic Union serves as a model of economic and social success in a region without internal borders.<sup>101</sup> The European Union has attempted to copy the success of the Benelux Union through multilateral and bilateral agreements and treaties in an effort to combat organized crime.<sup>102</sup> Despite all attempts to date, however, organized crime is growing and now thrives in the world market. If the past is any indication of the future, the organized crime problem will only get worse unless the Union members unite and work together.

2. *The 1988 Vienna Convention*.—The United Nations is a crucial link to an integrated and comprehensive system of cooperation in Europe. An example of such an effort began with the Comprehensive International Convention on Illicit Drug Traffic, adopted by the 1988 United Nations Vienna Convention [hereinafter 1988 Vienna Convention].<sup>103</sup> The 1988 Vienna Convention criminalized internationally-recognized drug trafficking offenses and created a framework for international cooperation.<sup>104</sup>

The 1988 Vienna Convention clearly illustrates that the battle against organized crime has just begun. For example, the 1988 Convention focused on drug trafficking, while neglecting other forms of organized criminal activity. Moreover, like previous agreements, The 1988 Vienna Convention worked to preserve national sovereignty, and

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98. *Id.* at 36.

99. For example, many countries such as the United Kingdom, France, and Germany want to establish a central European police force, discussed *infra* part V.B, yet refuse to disclose nationally sensitive information. See Robin Gedye, *Germany Seeks Europolice*, THE DAILY TELEGRAPH, Dec. 9, 1994, available in LEXIS, News Library, CURNWS File.

100. See *supra* notes 26-30 and accompanying text.

101. See Schutte, *supra* note 4, at 77-82.

102. *Id.* The Schengen Agreement, discussed *infra* notes 107-127 and accompanying text, is one example of the Union's attempt to model a more far-reaching agreement after the Benelux Union. Schutte, *supra* note 4, at 77-82 (comparing the Benelux Agreement to the Schengen Agreement).

103. See 1988 Vienna Convention, *supra* note 2.

104. *Id.*

did not create a unified agreement to eradicate the drug trafficking crisis. For example, article 9 of the 1988 Vienna Convention emphasizes a close cooperation "consistent with [each country's] respective domestic legal and administrative systems."<sup>105</sup> The 1988 Vienna Convention also states that all cooperative arrangements would be made via bilateral or multilateral agreements as opposed to one, unified agreement that would effect the entire European Union.<sup>106</sup> While this effort is noble, it falls far short of what is required to tackle the drug trafficking and organized crime problems.

3. *The Schengen Agreement*.<sup>107</sup>—The Schengen Agreement, adopted by the Schengen Convention<sup>108</sup> in 1990, was to be the final panacea to the organized crime dilemma. Modeled after the 1960 Benelux Agreement,<sup>109</sup> this new proposal offered a more modern approach to fighting organized crime through the use of state-of-the-art technology, computerization, and other Union resources. In 1985, five of the fifteen Union member states<sup>110</sup> reached an agreement to ease controls at the common borders in anticipation of the complete abolition of the borders in the future.<sup>111</sup> Intensive negotiations over the agreement continued between the countries from 1986-1990 until the Schengen Agreement was signed in December 1990. Since Schengen's implementing convention in November 1990, four other Union member states have joined the Agreement.<sup>112</sup>

In contrast to the Benelux Agreement, the Schengen Agreement incorporates in a single comprehensive document all provisions

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105. *Id.* art. 9.

106. *Id.*

107. Agreement Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Control at Common Frontiers, *done* at Schengen on June 14, 1985, 30 I.L.M. 68 (1991) [hereinafter *Schengen Agreement*].

108. The Convention Applying the Schengen Agreement was done on June 19, 1990. *See* Applying the Schengen Agreement of 14 June 1985 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at Their Common Borders, 30 I.L.M. 84 (1989) [hereinafter *Schengen Convention*]. The Final Act, Minutes, and Joint Statement from the meeting appear respectively at 30 I.L.M. 143, 146, and 147 (1991).

109. *See supra* notes 26-30 and accompanying text.

110. The original drafters of the Schengen Agreement were representative of Belgium, France, the Federal Republic of Germany, the Netherlands, and Luxembourg.

111. The deadline for the harmonization of visa policies between the Member States is June 30, 1996.

112. *Social Affairs, supra* note 37, § 6.6. Later treaties of accession to the Schengen Agreement were signed by Italy, Spain, Portugal and Greece. *Id.* Today the only Union members that have not joined the Schengen Agreement are Denmark, Ireland, and the United Kingdom. *Id.*

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considered necessary to abolish border checks on persons.<sup>113</sup> For example, articles 9-18 of the Convention attempt to harmonize visa requirements in expectation of a future common-visa.<sup>114</sup> In addition, articles 48-53 examine mutual legal assistance, articles 59-66 discuss extradition arrangements, and articles 67-69 offer a plan for the transfer of prisoners.<sup>115</sup> Even more important to fighting organized crime, a considerable part of the convention concerns issues relating to police and security.<sup>116</sup> For example, article 40 discusses the special circumstances in which a nation's police agency may cross into another country to continue observation of a suspected criminal.<sup>117</sup> Article 41 further explains that under certain circumstances the police agency may enter another country to pursue an apprehended suspect.<sup>118</sup>

The Schengen Convention also contains provisions coordinating domestic legislation and policies concerning drugs, firearms, and ammunition.<sup>119</sup> These areas typically thrive in the absence of border controls. Furthermore, the Convention establishes a shared computer information system, called the Schengen Information System (SIS).<sup>120</sup> Not only could this system help control external borders, but it could also control money laundering and other highly-technical organized criminal activities. In addition, it would be easier to keep track of people within the internal frontiers.

The Schengen Secretariat foresees the complete abolition of controls on persons within the signatory countries by 1995.<sup>121</sup> This is an optimistic step for the Union, which also presents the problem of easier access for organized crime syndicates and their illicit activities. Even

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113. See Schutte, *supra* note 4, at 77-82.

114. Schengen Convention, *supra* note 108, arts. 9-18.

115. *Id.* arts. 48-53, 59-66, 67-69.

116. *Id.* arts. 39-91.

117. Article 40 of the Schengen Convention states that police officers within the framework of a criminal investigation, who are observing a person who is presumed to have taken part in a criminal offense to which extradition may apply, "shall be authorized to continue their observation in the territory of another [country] where the latter has authorized cross-border observation in response to a request for assistance." *Id.* art. 40. Article 40 enumerates the specific offenses that justify cross-border observation. Some of these offenses include: assassination, murder, rape, arson, extortion, and traffic in human beings and drugs. *Id.*

118. Schengen Convention, *supra* note 108, art. 41.

119. *Id.* arts. 70-91.

120. *Id.* arts. 92-119.

121. See *Social Affairs*, *supra* note 37, § 6.6. It should be noted that there have been delays in implementing the Schengen Convention due to "technical difficulties" in setting up the computerized system. See *EP Considers That Cooperation in Justice and Internal Affairs Has Not Been Sufficient*, REUTERS TEXTLINE AGENCY EUR., Dec. 15, 1994, available in LEXIS, News Library, CURNWS File.



without the full implementation of the Schengen Convention, it is evident that loosening border control restrictions has opened the door to an increased flow of organized crime activity within the Union. Also, by focusing on tightening external borders,<sup>122</sup> the Convention effectively cuts off contracting parties from the rest of the European Union. Unless the reach of the Schengen Convention extends to cover the entire region, and steps are taken to monitor<sup>123</sup> and suppress organized criminal activity,<sup>124</sup> the impact of the Convention will be disappointing.

Moreover, like the 1988 Vienna Convention, the Schengen Convention emphasizes national sovereignty. For example, article 73 of the Schengen Convention endorses a technique known as controlled delivery, but suggests that such technique be "[i]n conformity with [Member State's] constitutions and their national legal systems."<sup>125</sup> Article 41 proposes steps for "hot pursuit" of criminals into other jurisdictions, but its effect is impeded by the lack of agreement on uniform provisions for implementation.<sup>126</sup> Despite Schengen's promise to end organized crime, its limited reach and careful wording so as to maintain national sovereignty makes the Convention ineffective at fighting organized crime.<sup>127</sup>

4. *The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.*—In September 1990, the Council of Europe adopted the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.<sup>128</sup> The Convention was designed to facilitate international cooperation with regard to investigative assistance, searches, seizures, and confiscation of proceeds from all types of crimes.<sup>129</sup> A major goal of this Convention was to include non-

122. Schengen Convention, *supra* note 108, arts. 3-8.

123. For example, monitoring may be accomplished through the effective use of the Schengen Information System.

124. One way to suppress criminal activity is through the empowerment of Europol. *See infra* part V.B.

125. Schengen Convention, *supra* note 108, art. 73. Specifically, controlled delivery involves allowing a delivery of illicit drugs and then secretly conducting surveillance to discover the ultimate destination envisaged by the traffickers. Gilmore, *supra* note 9, at 1962.

126. Schengen Convention, *supra* note 108, art. 41. Hot pursuit involves allowing the officers of one party to continue pursuit of a person who is in violation of one of the listed criminal offenses into the territory of another contracting party if it is an emergency and no prior notice can be given prior to entering the territory. *See* Gilmore, *supra* note 9, at 1962-64.

127. *See* Schutte, *supra* note 4, at 77-82.

128. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Nov. 8, 1990, Europ. T.S. No. 141 [hereinafter Laundering Convention].

129. Hans Nillson, *The Council of Europe Laundering Convention: A Recent Example of a Developing International Criminal Law*, 2 CRIM. L.F. 419, 423 (1991).

offense-specific provisions to criminalize money laundering.<sup>130</sup> In June 1991, this Convention was joined by a Council Directive for international cooperation to fight money laundering.<sup>131</sup> The Directive suggested ways to effectively combat the laundering of criminal proceeds through the cooperation of nations in tightening the open financial markets.<sup>132</sup> By offering various methods of cooperation, both the Convention and Directive are valiant efforts at coordinating an attack on the problem of money laundering. However, their efforts are compromised because neither the Convention nor the Directive utilize today's modern technology to the same extent or with the same success as the organized crime syndicates.<sup>133</sup> In addition, like the 1988 Vienna Convention, the focus of the Directive is narrow in scope and does not adequately address the other forms of organized crime linked to money laundering.<sup>134</sup>

5. *Smaller Scale Efforts.*—Several bilateral treaties represent small-scale efforts at fighting organized crime. For instance, in 1990, the Federal Republic of Germany and the former Soviet Union agreed to cooperate as partners in the fight against organized crime, terrorism, drug trafficking, and the manufacture and dissemination of counterfeit money.<sup>135</sup> Of course, recent developments since the end of the Cold War and the fall of communism in the former Soviet states<sup>136</sup> suggest that the success of this Treaty is far from realization.

In 1992, the U.N. Economic and Social Council put forth a report suggesting ways to strengthen existing international cooperation.<sup>137</sup> The report aimed at helping some of the developing countries to build the necessary technology to join the cooperative crime fighting effort. The

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130. *Id.* at 423-427 (listing other goals of the Laundering Convention).

131. Council Directive of June 10, 1991 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, *supra* note 78.

132. *Id.* For example, the Directive provides for stricter record keeping, disclosure of information to banks around the world when transactions seem suspicious, and tighter security within banking and other financial institutions. *Id.* arts. 5, 6, 11, and 15.

133. Later U.N. documents dealing with combatting money laundering suggest that since 1991, technology is still being utilized more effectively by criminal organizations. See *Control of Proceeds of Crime*, *supra* note 10, at 8.

134. See Council Directive of June 10, 1991 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, *supra* note 78.

135. Federal Republic of Germany-Union of Soviet Socialist Republics: Treaty on Good-Neighborliness, Partnership and Cooperation, *done* November 9, 1990, art. 19, 30 I.L.M. 504, 513 (1991).

136. See *supra* notes 54-57 and accompanying text.

137. *Strengthening Existing International Cooperation in Crime Prevention and Criminal Justice, Including Technical Cooperation in Developing Countries, with Special Emphasis on Combatting Organized Crime*, U.N. ESCOR, 1st Sess., Agenda Item 4, U.N. Doc. E/CN.15/1992/4 (1992). Additionally, see addenda 1-5 to the document.

report outlined some of the major organized crime activities, including money laundering,<sup>138</sup> and presented suggestions by criminal justice experts<sup>139</sup> on how to jointly fight these activities.<sup>140</sup> The question still remains, however, as to when the measures suggested in the report are to be implemented.

Despite relatively unsuccessful efforts at ending organized crime through agreements, the European Union has successfully instituted international organizations such as ICPO/Interpol,<sup>141</sup> the Customs Cooperation Council, and the Financial Action Task Force on Money Laundering. By monitoring specific aspects of organized crime, these groups present an infrastructure to help facilitate a cooperative and unified fight against organized crime.<sup>142</sup> It is now necessary to empower these groups with forceful Union-wide agreements that transcend each nation's individual legislation and policies.<sup>143</sup> Also, if the Union wants to succeed in its fight against organized crime, it must use these base organizations as a foundation for creating other specialized crime fighting agencies.<sup>144</sup>

#### IV. The Berlin Declaration: A Spring-board into the Future

In response to the current rise in organized criminal activity within the European Union, representatives from member nations and the countries of Eastern Europe met in Berlin in September 1994<sup>145</sup> to further discuss cooperative efforts to fight organized crime.<sup>146</sup> Although the resulting Berlin Declaration<sup>147</sup> [hereinafter Declaration] only represents a declaration of intent, it is the European Union's most recent attempt at cooperatively combatting organized crime. The Declaration also establishes a prime opportunity to institute a Union-wide

138. *Id.* add. 5.

139. *Id.* add. 4.

140. *Id.* add. 1. This addendum item includes methods of confiscating criminal proceeds.

141. ICPO is an acronym for International Criminal Police Organization. Sherman, *supra* note 4, at 1818-20.

142. *Id.*

143. *Id.*

144. For example, *see infra* part V.B.

145. *See generally* Tyler Marshall, *European Nations Combine to Combat Crime*, LOS ANGELES TIMES, Sept. 9, 1994, at 19A. Ironically, this meeting took place on the same day that Germany bade farewell to the last of the U.S., British, and French military forces who had guarded the city from the east for more than forty years. *Id.*

146. Signatories were 40 representatives of the original twelve European Union Member States, including the Czech Republic, Slovakia, Bulgaria, Poland, Romania and Hungary, as well as Sweden, Finland, Norway, and Austria. Berlin Declaration, *supra* note 2. Participating experts from the United States, Canada, Morocco, and Switzerland also approved the paper. *Id.*

147. *Id.*

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effort to fight against organized crime with forces from both Eastern and Central Europe.<sup>148</sup>

Promising features of the Schengen Agreement, as well as many of the earlier efforts, are integrated in this brief document, targeting current organized crime threats. The Declaration suggests a five-point joint strategy to fight "all forms of organized crime."<sup>149</sup> The strategy concerns five specific criminal areas, which include: (1) illicit drug trafficking; (2) theft of and illegal trade in radioactive and nuclear materials; (3) trafficking in human beings; (4) illegal immigration networks; and (5) illegal transfer and smuggling of motor vehicles.<sup>150</sup> The aim of the Declaration is not only to improve cooperation, but also to reinforce security within Europe.

To combat the first targeted crime, drug trafficking, the drafters of the Declaration list five different areas of cooperation. These areas include: (1) ratification of the 1988 Vienna Convention;<sup>151</sup> (2) transboundary observation; (3) cooperation with regard to "controlled deliveries;" (4) cooperation in use of informants and undercover agents; and (5) use of the coordinating function of the U.N. Drug Control Programme (UNDCP-Task Force) to assist in training and exposing Union member nations to modern equipment.<sup>152</sup>

The second area of concern is the crime of smuggling nuclear materials. Among the tactics suggested to combat this crime are: (1) preparation of a comprehensive assessment to help hone in on the source and extent of the problem, and to analyze the type of offenders likely to commit the crime; (2) cooperation regarding the protection of existing radioactive and nuclear stocks; (3) creation of rapid reporting channels; (4) mutual assistance of prosecuting authorities and harmonized measures of mutual support in terms of staff, equipment, and organization; and (5) provision of appropriate surveillance installations to intensify border controls.<sup>153</sup>

The third element of the Declaration's joint strategy concerns the trafficking of human beings. To combat this criminal activity, the drafters suggest extending the responsibilities of bilateral liaison officers and collecting statistical data.<sup>154</sup>

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148. See *Justice and Home Affairs: EU Joins Forces with Eastern Europe Against Organised Crime*, EUR. INFO. SERVICE - EUR. REP., September 11, 1994, Section #1974.

149. Berlin Declaration, *supra* note 2, para. 1.

150. *Id.*, para. 3.

151. 1988 Vienna Convention, *supra* note 2.

152. Berlin Declaration, *supra* note 2, para. 3.

153. *Id.*

154. *Id.*

The freedom of movement resulting from the formation of the European Union<sup>155</sup> also gives rise to illegal immigration networks. In this area, the drafters offer five forms of cooperation, including: (1) cooperation in visa policies; (2) effective border controls and surveillance in countries from or through which people are smuggled; (3) action against sea and air carriers transporting aliens; (4) regulations aimed at the forfeiture of profits from such crimes; and (5) cooperation in the rapid return of illegal aliens to their home countries.<sup>156</sup>

The drafters offer only two measures for fighting the final targeted area of illegal transfers of motor vehicles. These efforts include the return of stolen vehicles and the sharing of information among Eastern and Central Europe regarding missing motor vehicles.<sup>157</sup> By early 1994, more than 144,000 cars were stolen, of which only sixty percent were recovered by police.<sup>158</sup> It is hoped that through the steps elaborated in the Declaration, the number of stolen vehicles will be drastically reduced.

Admirably, the Declaration seeks to integrate the cooperative aspects of previous agreements rather than ignore them. For example, the Declaration reiterates the provisions of the 1988 Vienna Convention<sup>159</sup> and the November 1990 Council of Europe Convention on Money Laundering, Tracing, Seizure and Confiscation of Crime Proceeds.<sup>160</sup> The fifth paragraph of the Declaration aims to provide the "greatest possible degree of effective cooperation in criminal matters."<sup>161</sup> To reach this level of cooperation, the drafters suggest using all existing multilateral instruments to the fullest possible extent when preparing penal provisions and rules governing criminal procedure.<sup>162</sup>

Still, a major flaw in this Declaration, like many documents preceding it, is the central aim in preserving national sovereignty at the expense of unity. Indeed, paragraph two of the Declaration clearly states "cooperation is to be developed with due regard to national legislation and existing initiatives . . . ." <sup>163</sup> This paragraph lists some general forms of cooperation including: (1) the exchange of liaison officers and

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155. *Id.* pmbl.

156. *Id.*, para. 3.

157. Berlin Declaration, *supra* note 2.

158. See Wolfgang Munchau, *German and Dutch Chemicals "Fuelling Cocaine Trade"*, THE TIMES (London), Sept. 9, 1994.

159. 1988 Vienna Convention, *supra* note 2.

160. Laundering Convention, *supra* note 128; Berlin Declaration, *supra* note 2, para. 4.

161. Berlin Declaration, *supra* note 2, para. 5.

162. *Id.*

163. *Id.* para. 2.

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experts to provide information on techniques, methods, and special forms of crime suppression and forensic science; (2) coordination of assistance in the field of counseling, equipment, and training; and (3) use of compatible technical equipment and procedures.<sup>164</sup> These forms of cooperation simply do not go far enough to overcome the stubborn maintenance of national sovereignty.

The Declaration was not adopted as unified Union law,<sup>165</sup> thereby further crippling its effect at combatting organized crime. Instead, the Declaration is a point of departure for the battle against crime that needs to develop into a formal institutional framework.<sup>166</sup> German Interior Minister Manfred Kanther suggested that the Declaration will be put into effect through "many small and practical steps."<sup>167</sup> It is one of the first efforts to bring together Central and Eastern Europe to fight the growing problem of organized crime. Once the internal frontiers are truly eliminated, and uniting declarations like that in Berlin take control within the Union, organized crime groups will have a tougher time functioning in Europe.<sup>168</sup>

### V. The Future Battle Against Organized Crime in Europe

#### A. *The World Ministerial Conference on Organized Transnational Crime*

On November 21, 1994, the United Nations held a landmark conference to discuss more effective forms of international cooperation to combat organized crime as outlined in the Berlin Declaration. For three days, delegates from more than 140 nations participated in the conference that focused on curbing organized drug trafficking, smuggling

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164. *Id.*

165. According to paragraph 6 of the Declaration, there was a U.N. Conference for Combatting Organized Crime held in Naples in November 1994, which sought to adopt the Berlin Declaration in a more substantive form. See *infra* notes 169-173 and accompanying text (discussing the Naples meeting).

166. See *EU: Joint Declaration on Cooperation in Fight Against Organised Crime and Secret Immigration Channels*, REUTER TEXTLINE AGENCY EUROPE, Sept. 9, 1994, available in LEXIS, News Library, CURNWS File.

167. *European Countries to Wage War Together Against Organised Crime*, DEUTSCHE PRESSE-AGENTUR, Sept. 8, 1994, available in LEXIS, News Library, CURNWS File.

168. For other criticisms of the Berlin Declaration, see Andrew Marshall, *German Plan to Reach Out to Central Europe Triggers Row With EU Partners*, THE INDEPENDENT, Oct. 5, 1994, at 8; *EU/Southern Africa: Berlin Declaration Fails to Address Lome Convention Concerns*, EUR. INFO. SERVICE - EUR. REP., Sept. 11, 1994, available in LEXIS, News Library, CURNWS File.

of nuclear materials and arms, money laundering, trafficking in stolen cars, computer crime, illegal immigration, and waste dumping.<sup>169</sup>

The 140 nations unanimously adopted a global action plan to combat organized crime crossing international borders.<sup>170</sup> The participating nations pledged to unite in a more sophisticated and coordinated force against organized crime syndicates.<sup>171</sup> It is hoped that the results of the conference will lead the U.N. General Assembly to adopt a new convention.<sup>172</sup>

Although this conference did not yield far-reaching results, it was one of the first conferences focusing on the need to overcome national sovereignty to organize a united fight against international organized crime.<sup>173</sup> Despite such promise, however, recent attempts to defeat organized crime in Europe have been relatively unsuccessful. National sovereignty has managed to stifle the formation of a powerful united front. If the Union is to defeat organized crime, the first major step is to empower an organized police force.

### B. Europol

When the Union drafted the Maastricht Treaty on European Union,<sup>174</sup> it called for mutual assistance and judicial cooperation.<sup>175</sup> In particular, the Treaty called for the formation of Europol, the European Police Office.<sup>176</sup> Europol was to act as the central police force in the Union. The development and coordination of Europol was left to the TREVI Group.<sup>177</sup> While the empowerment of Europol is not a total panacea to the crime crisis, with organized crime reaching crisis

169. See *U.N. Gears for Landmark Conference on Crime*, *supra* note 62; *Xinhua Review of Major World News Events in November*, XINHUA NEWS AGENCY, Nov. 30, 1994, available in LEXIS, News Library, CURNWS File.

170. *Xinhua Review of Major World News Events in November*, *supra* note 169.

171. *Id.*

172. *U.N. Gears for Landmark Conference on Crime*, *supra* note 62. It is hoped that a new convention will be more far-reaching than the 1988 Vienna Convention. *Id.*

173. This attitude is best reflected in an address by Social Affairs Commissioner Padraig Flynn. At the opening of the conference, Mr. Flynn eloquently expressed: "Organised [sic] crime is a many-headed monster whose tentacles spread far and wide and threaten the very fabric of our society and civilisation [sic]. Increasingly, organised [sic] crime operates internationally and the international community needs to increase the effectiveness and sharpen the edge of its cooperation to fight it." *Address by Mr. Padraig Flynn to the World Ministerial Conference on Organized Transnational Crime*, RAPID, Nov. 21, 1994, available in LEXIS, News Library, CURNWS File.

174. See Maastricht Treaty, *supra* note 11.

175. *Id.* tit. VI, art. K.

176. *Id.* art. K.1, para. 9.

177. See *supra* notes 35-38 and accompanying text.

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proportions within the European Union, it is an essential element to stopping criminal activity in Europe.

In 1991, German Chancellor Helmut Kohl, speaking in Edinburgh, argued for a European police force "that would be able to operate without let or hinderance in all the Community countries in important matters such as the fight against drug barons or organized international crime."<sup>178</sup> In June 1993, the Interior and Justice Ministers from the Union Member States officially signed the Europol Convention setting up Europol headquarters at The Hague in the Netherlands.<sup>179</sup> The provisions of the Convention, however, are much less extensive and ambitious than those contained in the original German proposals.<sup>180</sup> The primary function of Europol is to gather and analyze information held by the different national police forces. Europol's power does not include taking part in physical law enforcement actions.<sup>181</sup> Due to the Schengen Agreement, only the national police forces may take physical action in pursuing, observing, and apprehending criminals under special circumstances.<sup>182</sup>

Consequent to a Ministerial Agreement concluded in Copenhagen, Denmark, in June 1993, which established the Europol Drugs Unit (EDU) as the first pre-convention stage of Europol activity in the Union,<sup>183</sup> the European Council recently met in Brussels where it adopted a set of rules to guide the initial empowerment of the EDU.<sup>184</sup> Taking into account prior Council agreements regarding the EDU's mandate,<sup>185</sup> the EDU is designed to "act as a non-operational team for the exchange and analysis of information and intelligence . . . in relation to: (1) illicit drug trafficking; (2) illicit trafficking in radioactive and nuclear substances; (3) crimes involving clandestine immigration

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178. Gilmore, *supra* note 9, at 1965.

179. Europol Convention, 1993 O.J. (C 323). *Social Affairs*, *supra* note 37, § 6.5.

180. Gilmore, *supra* note 9, at 1965.

181. *Social Affairs*, *supra* note 37, § 6.5.

182. *See supra* part III.D.3.

183. Gilmore, *supra* note 9, at 1965-67. The establishment of the EDU reflects the fact that drug trafficking is of top concern to Union members and that initiatives to counter the trafficking is strongly supported by national legislatures and the European Parliament. *Id.*

184. Joint Action of 10 March 1995 Adopted by the Council on the Basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit, Mar. 10, 1995, 1995 O.J. (L 62) [hereinafter EDU Agreement]. This agreement replaces the original June 2, 1993 agreement establishing the EDU. *Id.* art. 8.

185. On December 9th and 10th in Essen, the Council decided to extend the mandate of the EDU to fight against illegal trade in radioactive and nuclear materials, crimes involving illegal immigration networks, illegal vehicle smuggling and associated money laundering operations. *Id.* pmbl.



networks; and (4) illicit vehicle trafficking, together with the criminal organizations involved and associated money-laundering activities."<sup>186</sup>

If Europol is to effectively fight organized crime activities in Europe, it must be empowered beyond mere intelligence gathering and analysis. At the September meeting in Berlin,<sup>187</sup> the Union Member States did not agree to extend the jurisdiction or power of Europol beyond its current EDU function of information gathering, analysis, and circulation. However, it was agreed that Europol's remit should be widened gradually over time to encompass other forms of organized crime. Following the Berlin meeting, British Home Secretary Michael Howard said: "Member States are united in their opposition to the idea of putting Europol 'in the front line' of the fight against crime."<sup>188</sup>

On January 26, 1995, the Interior Ministers of the Union Member States met in Paris where they came close to an agreement on the future structure of Europol.<sup>189</sup> At this meeting, a five-point compromise text was "agreed in principle," where it was finally decided that sensitive data would only be provided to the "liaison officers" of Europol and not to the police forces of individual Union Member States.<sup>190</sup> The Ministers also agreed to include terrorism in Europol's areas of responsibility.<sup>191</sup>

Once again, however, national sovereignty is a major hurdle to overcome in the fight against organized crime in the Union.<sup>192</sup> Similar to past agreements, the recent EDU Agreement suggested that members of this centralized Unit "[act] in accordance with their national laws . . . ." <sup>193</sup> Furthermore, by having individual law enforcement bodies associated with each Union nation, the result is ineffective and duplicitous law enforcement.<sup>194</sup> Although there are obvious concerns relating to the centralization of a police force, such as leakage of classified national security information and abdication of control over

186. *Id.* art. 2, para. 2.

187. *See supra* part IV.

188. *See Justice and Home Affairs: EU Joins Forces with Eastern Europe Against Organized Crime, supra* note 148.

189. *See Social Affairs, EC COMMENTARIES*, 1995, at § 6.5, available in LEXIS, News Library, CURNWS File.

190. *Id.*

191. *Id.*

192. Germany would like to see Europol expanded into a fully-fledged European police force. Lockwood, *supra* note 76. France and Britain view the proposed expansion of Europol with some reluctance based on national sovereignty. *Id.*

193. EDU Agreement, *supra* note 184, art. 2, para. 3.

194. *See generally* Gilmore, *supra* note 9, at 1966.

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national protection, such risks are necessary to establish an organized force to thwart organized crime.<sup>195</sup>

It remains to be seen whether Europol will ever acquire this operational mandate. In the face of organized crime, member states will likely have no option but to further empower the centralized police force.<sup>196</sup> It is hoped that the E.U. Heads of State will finally endorse the official structure of the Europol Convention at the European Council Meeting in Cannes, France in June 1995.<sup>197</sup>

### *C. Upcoming Conferences and Planned Tactics to Fight Organized Crime*

The Council of Europe is planning an anti-corruption convention consistent with their recent meetings held in Geneva and Essen.<sup>198</sup> The Geneva meeting, held on September 9, 1994, included thirty-five European magistrates from Switzerland, France, Italy, and Spain.<sup>199</sup> At the meeting, the magistrates requested "judicial instruments" to fight corruption and called for more flexibility in international cooperation to fight organized crime and corruption.<sup>200</sup> This flexibility includes simplification of extradition and mutual aid procedures in financial and banking cases, and the option of prosecuting corruption involving foreign authorities or civil servants.<sup>201</sup> The prospective Council convention could be a substantial step towards judicial unity. The meeting is scheduled for June 26 and 27, 1995 in Cannes, France. It is hoped that the Council will endorse the Europol Convention, and also institute a comprehensive package of cooperation on the areas espoused in the Berlin Declaration.<sup>202</sup>

To aid in the European Union efforts to combat organized crime, the U.S. Federal Bureau of Investigation will be opening a law enforcement training academy in Europe.<sup>203</sup> Two million dollars will

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195. *Id.*

196. See generally Munchau, *supra* note 158; Jurgen Storbeck, INTELLIGENCE NEWSL., Sept. 8, 1994, available in LEXIS, News Library, CURNWS File.

197. See *Social Affairs*, *supra* note 189.

198. *Legal Affairs: Judges Call for European Measures to Fight Corruption*, EUR. REP., Sept. 14, 1994, available in LEXIS, News Library, CURNWS File; see also *European Council - 9 and 10 December 1994 in Essen*, RAPID, Dec. 10, 1994, available in LEXIS, News Library, CURNWS File.

199. *Legal Affairs: Judges Call For European Measures to Fight Corruption*, *supra* note 198.

200. *Id.*

201. *Id.*

202. See *Social Affairs*, *supra* note 189; see also *European Council - 9 and 10 December 1994 in Essen*, *supra* note 198.

203. Karen Lowe, *Bill Clinton Calls for International Coalition to Defend Democracy*, AGENCE

allow the FBI to establish an Eastern European international organized crime training facility.<sup>204</sup> This academy will train European law enforcement officials in tactics to attack drug and other organized crime activities, including the new crime of nuclear materials smuggling.<sup>205</sup> U.S. involvement in the formation of a unified European front against organized crime will undoubtedly be helpful. However, efforts should focus more on the training of Europol officials and not merely the individual law enforcement agencies of member states. If Europe is to win the battle against organized crime, it must be fought and won by the united European Union.

## VI. Conclusion

Organized crime is infecting the entire European Union. The end of the Cold War, coupled with the loosening of internal borders within the Union, has permitted the crime problem to grow at an exponential rate. Despite numerous attempts, the Union member nations have been unable to unite. Whether it was the 1988 Vienna Convention, the Schengen Agreement, or the recent Berlin Declaration, preservation of national sovereignty has become the major barrier to forming a true united front against organized criminal activity. The agreements and treaties to date have worked to preserve national sovereignty by maintaining national legislation and policy. Instead of forming a union against crime, Europe has become more of a breeding ground to perpetuate crime.

To defeat the growing organized crime problem, it is necessary for all members of the European Union to suppress the urge for national sovereignty and to work toward a more secure union. True unification will require trust, dedication, and cooperation. Europol must be further empowered and the Schengen Agreement must be expanded to allow the European Police to enter all Union jurisdictions to pursue and apprehend criminals. Countries must mutually assist each other by utilizing state-of-the-art technology in tracking complex organized crime activity. If Europe does not act now to unite and cooperate in fighting crime, what remains of the Union will eventually fall into the control of organized crime syndicates.

*Joel S. Solomon*

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FRANCE PRESSE, Sept. 26, 1994, available in LEXIS, News Library, CURNWS File.

204. *Prepared Statement of Janet Reno Attorney General of the United States*, FED. NEWS SERV., Feb. 22, 1995, available in LEXIS, News Library, CURNWS File.

205. See Lowe, *supra* note 203.